



PATENT
7251/111536

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: NYGAARD et al.)
For: SYSTEM FOR TRANSMITTING)
INFORMATION FROM A STREAMED)
PROGRAM TO EXTERNAL DEVICES)
AND MEDIA)
Serial No.: 10/556,936)
371(c) Date: 19 July 2006)
Group Art Unit: 2425)
Examiner: Ryan S. STONCZER)

APPLELANTS' BRIEF ON APPEAL

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir or Madam:

This is an Appeal from the Final Office Action mailed 14 April 2010. A Notice of Appeal and the applicable fee were submitted on 12 July 2010.

The applicable fee accompanies this brief. Should there be any deficiency in fees in connection with this Appeal, the Commissioner is hereby authorized to charge any such deficiency in fees to Deposit Account 23-0920.

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1. REAL PARTY IN INTEREST.

The real parties in interest are NDS LIMITED and its parent company NDS Group Limited, both companies organized under the laws of England, and both with a place of business at One London Road, Staines, Middlesex TW18 4EX, United Kingdom.

2. RELATED APPEALS AND INTERFERENCES.

There are no appeals, interferences, or judicial proceedings related to, directly affecting or affected by, or having a bearing on the Board's decision in the captioned Appeal.

3. STATUS OF CLAIMS.

Claims 75-78, 81-95, 98-100, 103-106, 116-125, 127-132, 134-137, 150 and 156 are currently pending. Claims 81, 87-94, 101, 102, 117-125, 131, 132 and 134-137 have been withdrawn. Claims 75-78, 82-86, 95, 98-100, 103-106, 116, 127-130, 150 and 156 have been finally rejected and are being appealed. All other claims have been cancelled without prejudice. That is,

1-74: cancelled without prejudice

75-78: currently pending, finally rejected, subject of this appeal

79-80: cancelled without prejudice

81: withdrawn

82-86: currently pending, finally rejected, subject of this appeal

87-94: withdrawn

95: currently pending, finally rejected, subject of this appeal

96-97: cancelled without prejudice
98-100: currently pending, finally rejected, subject of this appeal
101-102: withdrawn
103-106: currently pending, finally rejected, subject of this appeal
107-115: cancelled without prejudice
116: currently pending, finally rejected, subject of this appeal
117-125: withdrawn
126: cancelled without prejudice
127-130: currently pending, finally rejected, subject of this appeal
131-132: withdrawn
133: cancelled without prejudice
134-137: withdrawn
138-149: cancelled without prejudice
150: currently pending, finally rejected, subject of this appeal
151-155: cancelled without prejudice
156: currently pending, finally rejected, subject of this appeal

4. STATUS OF AMENDMENTS

No amendments were filed subsequent to the final rejection.

5. SUMMARY OF CLAIMED SUBJECT MATTER.

Citations are to the application as filed, which is included in the Evidence Appendix, tab 1.

Independent Claim 75 recites a method for transmitting a video and/or audio sequence to a target device. (*See e.g.* 19:8-10; 20:1-3). The transmitting is based on a selection of a streamed broadcast program. (*See e.g.* 19:18-19). The streamed broadcast program is broadcast to a user for being rendered on a display. (*See e.g.* 19:2-4). The selection is selected from the streamed broadcast program by the user pressing a key on a keypad of a user selection unit. (*See e.g.* 36:23-25). The selection is made by the user at a selection time substantially when the selection is rendered on the display. (*See e.g.* 36:25-27). The method comprises computing the selection time when the user pressed the key on the keypad. (*See e.g.* 36:26-28). It further comprises then identifying the selection based on the computed selection time when the user pressed the key on the keypad with respect to rendering progress of the streamed broadcast program on the display. (*See e.g.* 36:28 – 37:2). It further comprises then transmitting the video and/or audio sequence based on the selection of the streamed broadcast program to at least one of an external device and an external medium. (*See e.g.* 37:16-17).

Independent Claim 150 recites a headend system for transmitting a video and/or audio sequence to a target device. (*See e.g.* 19:8-10; 20:1-3). The transmitting is based on a selection of a streamed broadcast program. (*See e.g.* 19:18-19). The streamed broadcast program is broadcast to a user for being rendered on a display (such as television display 110 in Fig. 2B). (*See e.g.* 19:2-4). The selection is selected from the streamed broadcast program by the user pressing a key on a keypad (such as keypad 140 in Fig. 2B) of a user selection unit. (*See e.g.* 36:23-25). The selection is made by the user at a selection time substantially when the selection is rendered on the display. (*See e.g.* 36:25-27).

The system comprises an identifier unit (such as identifier unit 230 in Fig. 6) to compute the selection time when the user pressed the key on the keypad (*see e.g.* 36:26-28); and then to identify the selection based on the computed selection time when the user pressed the key on the keypad with respect to rendering progress of the streamed broadcast program on the display (*see e.g.* 36:28 – 37:2). (*See e.g.* 43:29 – 44:7). It further comprises a transmitting unit (such as transmitting unit 240 in Fig. 6) to transmit the video and/or audio sequence based on the selection of the streamed broadcast program to at least one of an external device and an external medium (*see e.g.* 37:16-17). (*See e.g.* 44:8-13).

Independent Claim 156 recites a headend system for transmitting a video and/or audio sequence to a target device. (*See e.g.* 19:8-10; 20:1-3). The transmitting is based on a selection of a streamed broadcast program. (*See e.g.* 19:18-19). The streamed broadcast program is broadcast to a user for being rendered on a display (such as television display 110 in Fig. 2B). (*See e.g.* 19:2-4). The selection is selected from the streamed broadcast program by the user pressing a key on a keypad (such as keypad 140 in Fig. 2B) of a user selection unit. (*See e.g.* 36:23-25). The selection is made by the user at a selection time substantially when the selection is rendered on the display. (*See e.g.* 36:25-27). The system comprises means for computing the selection time when the user pressed the key on the keypad (*see e.g.* identifier unit 230 in Fig. 6; *see also* 27:26-28). It further comprises means for identifying the selection based on the computed selection time when the user pressed the key on the keypad with respect to rendering progress of the streamed broadcast program on the display (*see e.g.* identifier unit 230 in Fig. 6 and 47:8-15). It further comprises means for

transmitting the video and/or audio sequence based on the selection of the streamed broadcast program to at least one of an external device and an external medium unit (*see e.g.* transmitting unit 240 in Fig. 6 and 44:8-13).

6. **GROUNDS FOR REJECTION.**

The rejected claims stand rejected under 35 U.S.C. §103(a) as being rendered obvious by Logan (US 2005/0005308) in view of Wanderscheid (US 5,602,582) and further in view of Reisman (US 2003/0229900).

7. **ARGUMENT – CLAIMS 75-78, 82-86, 95, 98-100, 103-106, 116, 127-130, 150 AND 156 – NO REASON TO COMBINE LOGAN AND WANDERSCHEID**

a. **THE CLAIMS**

The invention concerns enabling a user to select information, such as a video and/or audio sequence, to be transmitted from a streamed broadcast program being displayed to external devices and media. (*See e.g.* application as filed at 4:2-8). Independent claim 75 recites *inter alia* “computing the selection time when the user pressed the key on the keypad; then identifying the selection [from the streamed broadcast program] based on the computed selection time....” Independent claims 150 and 156 recite substantially the same language. All of the other claims depend directly or indirectly from claim 75 and necessarily incorporate that language.

The Final Office Action (included in the Evidence Appendix, tab 2) relied on a principal reference Logan in combination with other references to reject each of the claims. With respect to the claim limitations quoted above, the Final Office Action stated on page 3 that “Logan does not explicitly teach computing said

selection time or identifying the selection based on said computed time, as recited.” The Final Office Action relied on combining Logan and Wanderscheid with respect to these claim limitations.

b. THE LOGAN REFERENCE

Logan (included in the Evidence Appendix, tab 3) concerns replaying selected segments of a broadcast sports event. “Metadata created either automatically or by human editors after the live sports event but before the playback is employed to identify the starting and ending points of segments of the stored broadcast and supplemental programming.... [T]he user is presented with a segment selection guide which is displayed to the viewer and which enables the user to selectively control which segments... are reproduced.” (Logan, ¶30).

c. THE WANDERSCHEID REFERENCE

Wanderscheid (included in the Evidence Appendix, tab 4) concerns processing a user input relating to previously prepared streamed digital video data. Execution control is transferred to a different routine, based on what is being displayed at the time of the input signal. An example is presented of a video promoting merchandise in a women’s clothing store. Different segments of the video concern different types of merchandise, and the routine to which execution control is transferred depends on when during the initial video the user generates an input signal. (See e.g. Wanderscheid, 4:26-59).

d. NO REASON TO COMBINE LOGAN AND WANDERSCHEID

Logan teaches allowing the user to view desired highlights of a recorded sports event without having to view other parts of the broadcast and, specifically, other parts of the broadcast preceding a desired highlight. Logan accomplishes

this by tagging and labelling different highlights of the broadcast, and identifying them in a listing available to the user for selection. To combine Logan with a system that relates sections of a broadcast to a running time of the broadcast at which a user generates an input signal, is merely an attempt to duplicate what is claimed rather than to enhance Logan. It is an exercise in hindsight rather than a demonstration of any benefit to be gained by combining references.

The only reason that the Final Office Action suggested for combining Logan and Wanderscheid was “to enable the segment selection taught by Logan without having to navigate the menu of Logan.” (Final Office Action at 4). However, Wanderscheid teaches making a selection based on that selection’s relationship with what is currently being viewed, but Logan already provides for the option of replaying a segment currently being viewed (Logan, ¶78). Logan does this without any need to relate sections of a broadcast to a running time of the broadcast at which a user generates an input signal, since the Logan broadcast sections already have been tagged and labelled. Because of the editing already built in to the Logan system, Logan already enables selection of a segment currently being viewed and there is no benefit to be achieved by incorporating the teaching of Wanderscheid into the Logan system.

Furthermore, Wanderscheid does not contribute to accomplishing the principal objective of Logan which is for the user to get directly to a particular highlight. Indeed, this objective is *inconsistent* with the Wanderscheid teaching of viewing through a broadcast until a point at which there is an interactive signal from the user. This is a second reason why there is no motivation to add the Wanderscheid teaching to Logan.

Similarly, Logan does not enhance the teaching of Wanderscheid in any way that suggests what is claimed. Wanderscheid teaches jumping from an initial video to another routine, which is selected *depending on when during the initial video a user generates a request*. While Logan's teaching of labelling and listing the "highlights" might present an efficient way for the Wanderscheid user to get directly to a desired routine, it would vitiate that aspect of Wanderscheid that serves the spontaneous whim of the user during broadcast of the initial video.

Most significantly, the only possible advantage of adding the teaching of Logan to Wanderscheid is let the user go directly to a desired routine *without* computing a running time to the corresponding point in the initial video. However, that would circumvent the very teaching for which the Final Office Action cited Wanderscheid. The combination would *not* then suggest what is claimed.

There is *no* rationale for combining Logan and Wanderscheid other than the improper one of attempting to duplicate what is claimed.

e. THE COMBINATION OF REFERENCES DO NOT RENDER THE CLAIMS OBVIOUS

"Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 418, 127 S.Ct. 1727, 1741 (2007). *See also Trimed Inc. v. Stryker Corp.*, 608 F.3d 1333, 1342, 95 U.S.P.Q.2d 1577, 1582 (Fed. Cir. 2010). "[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.... [I]nventions in most, if not all, instances rely upon

building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” *KSR*, 550 U.S. at 418-19, 127 S.Ct. at 1741.

There is *no* rational underpinning for concluding that the claims in this case are obvious based on combining Logan with Wanderscheid. As discussed above, the teaching of Wanderscheid provides no benefit for the Logan system. The only rationale mentioned in the Final Office Action is refuted by Logan itself. Logan discloses a more effective way to select a section currently being viewed than by incorporating the teaching of Wanderscheid. Conversely, incorporating the teaching of Logan into Wanderscheid circumvents the very features for which the Final Office Action cited Wanderscheid. The combination of the cited references does *not* render the claims obvious.

8. CLAIMS APPENDIX.

An appendix is attached containing a copy of the claims involved in this appeal.

9. EVIDENCE APPENDIX.

An appendix is attached containing the application as filed, the Final Office Action mailed 14 April 2010, Logan (US 2005/0005308 A1), and Wanderscheid (US 5,602,582).

10. RELATED PROCEEDINGS APPENDIX.

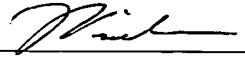
There are no related proceedings.

Favorable consideration of this Appeal and allowance of the captioned application are respectfully requested.

Respectfully submitted,

1 September 2010

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CLAIMS APPENDIX

75. A method for transmitting a video and/or audio sequence to a target device based on a selection of a streamed broadcast program, the streamed broadcast program being broadcast to a user for being rendered on a display, the selection being selected from the streamed broadcast program by the user pressing a key on a keypad of a user selection unit, the selection being made by the user at a selection time substantially when the selection is rendered on the display, the method comprising:

computing the selection time when the user pressed the key on the keypad; then

identifying the selection based on the computed selection time when the user pressed the key on the keypad with respect to rendering progress of the streamed broadcast program on the display; and then

transmitting the video and/or audio sequence based on the selection of the streamed broadcast program to at least one of an external device and an external medium.

76. The method according to claim 75 and also comprising:

receiving an indication signal which enables identification of the selection based on the selection time at which the selection was selected, wherein the identifying includes identifying the selection based on the indication signal.

77. The method according to claim 76 and wherein said identifying comprises:

computing, based on the indication signal, the selection time representing the time at which the selection was selected within a rendering period of the streamed broadcast program on the display; and

recognizing the selection as a discrete section which, in a sequential series of discrete sections constructed from the streamed broadcast program, corresponds to the selection time.

78. The method according to claim 77 and wherein each of the sections in the sequential series of discrete sections is tagged with a unique identification (UID), and the recognizing comprises determining a UID of the discrete section.

82. The method according to claim 75 and wherein the external device comprises at least one of the following: a mobile telephone; a computing device; an entertainment device; a printer; and a communication device.

83. The method according to claim 75 and wherein the external medium comprises at least one of the following: a medium in the external device; and a medium attached to the external device.

84. The method according to claim 75 and wherein the external medium comprises a memory stick.

85. The method according to claim 75 and also comprising receiving the video and/or audio sequence embedded in at least one of the following: a Multimedia Messaging Service (MMS) message; a Wireless Application Protocol (WAP) push message; a JAVATM application; and an electronic-mail (e-mail) message.

86. The method according to claim 75 and wherein the video and/or audio sequence is suitable for at least one of the following: playing on the external device; displaying on the external device; editing via the external device; and transmitting to another external device.

95. The method according to claim 75 and also comprising:
receiving a request to receive at least one of the following: another video and/or audio sequence preceding the selection in the streamed broadcast program; and another video and/or audio sequence following the selection in the streamed broadcast program.

98. The method according to claim 75 and wherein the streamed broadcast program comprises at least one of the following: a streamed audio program; a streamed video program; a streamed A/V program; and a streamed multimedia program.

99. The method according to claim 75 and wherein the streamed broadcast program comprises at least one of the following: a television program; an audio program; a video clip; an interactive television program; a multimedia program; and a multimedia presentation.

100. The method according to claim 76 and wherein the identifying comprises identifying the selection within an identification error range.

103. The method according to claim 77 and wherein:

- the streamed broadcast program comprises a digital program;
- the user selection unit is a remote control having the key;
- the selecting comprises pressing the key on the remote control; and
- the computing comprises computing the selection time at a Headend.

104. The method according to claim 103 and wherein the digital program comprises at least one of the following: an audio program; a video program; an A/V program; and a multimedia program.

105. The method according to claim 75 and wherein the indication signal is received from an STB.

106. The method according to claim 76 and wherein the receiving, the identifying and the transmitting are performed at a Headend.

116. The method according to claim 75 and wherein the transmitting of the video and/or audio sequence comprises:

producing an indication of agreement by a user to pay for the transmitting of the video and/or audio sequence; and

transmitting the video and/or audio sequence in response to the producing.

127. The method according to claim 75 and wherein the transmitting of the video and/or audio sequence comprises associating branding information identifying a provider of the streamed broadcast program with the video and/or audio sequence.

128. The method according to claim 127 and wherein the branding information comprises an owner rights code.

129. The method according to claim 78 and wherein the UID comprises an identifier based on a combination of values obtained from at least one of the following: a time code; a frame counter; and a discontinuation counter.

130. The method according to claim 78 and wherein the UID comprises an identifier derived from a received broadcast transmission.

150. A Headend system for transmitting a video and/or audio sequence to a target device based on a selection of a streamed broadcast program, the streamed broadcast program being broadcast to a user for being rendered on a display, the selection being selected from the streamed broadcast program by the user pressing a key on a keypad of a user selection unit, the selection being made by the user at a selection time substantially when the selection is rendered on the display, the Headend system comprising:

an identifier unit to: compute the selection time when the user pressed the key on the keypad; and then identify the selection based on the computed selection time when the user pressed the key on the keypad with respect to rendering progress of the streamed broadcast program on the display; and

a transmitting unit to transmit the video and/or audio sequence based on the selection of the streamed broadcast program to at least one of an external device and an external medium.

156. A Headend system for transmitting a video and/or audio sequence to a target device based on a selection of a streamed broadcast program, the streamed broadcast program being broadcast to a user for being rendered on a display, the selection being selected from the streamed broadcast program by the user pressing a key on a keypad of a user selection unit, the selection being made by the user at a selection time substantially when the selection is rendered on the display, the Headend system comprising:

means for computing the selection time when the user pressed the key on the keypad;

means for identifying the selection based on the computed selection time when the user pressed the key on the keypad with respect to rendering progress of the streamed broadcast program on the display; and

means for transmitting the video and/or audio sequence based on the selection of the streamed broadcast program to at least one of an external device and an external medium.

EVIDENCE APPENDIX

- 1 Application as filed
- 2 Final Office Action mailed 14 April 2010
- 3 Logan (US 2005/0005308 A1)
- 4 Wanderscheid (US 5,602,582)